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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,705	01/27/2004	Steffen Leonhardt	71186	3838
23872	7590	12/08/2006	EXAMINER NGUYEN, HUONG Q	
MCGLEW & TUTTLE, PC P.O. BOX 9227 SCARBOROUGH STATION SCARBOROUGH, NY 10510-9227			ART UNIT	PAPER NUMBER 3736

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/766,705	LEONHARDT ET AL.	
	Examiner Helen Nguyen	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 09 November 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,3,5,11,16-18,20 and 25-47 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 26,27,29-37 and 39-47 is/are allowed.  
 6) Claim(s) 1, 3, 5, 11, and 25 is/are rejected.  
 7) Claim(s) 16-18,20,28 and 38 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 23 August 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

1. This Office Action is responsive to the after-final amendment filed 11/09/2006. After a phone interview with applicant, the previous final action dated 9/19/2006 has been withdrawn and will be replaced with the non-final below, responsive to all amendments and arguments filed 6/20/2006. **Claims 1, 3, 5, 11, 16-18, 20 and 25-47** are pending.

### ***Claim Objections***

2. **Claim 38** is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. This is due to the fact that Claim 38 is an exact copy of **Claim 37**.

3. **Claims 20 and 28** are objected to because of the following informalities: “strands” should be changed to “tubes” as previously done with Claims 16-18 to maintain consistency of language. Also “said outer” should be “an outer” to avoid lack of antecedent basis. Appropriate correction is required.

### ***Double Patenting***

4. Applicant is reminded that all related applications should be disclosed for purposes of possible double patenting rejections. It is noted that application number 11244114 contains at least one common inventor and could be used to reject the present application on provisional obviousness double patenting if disclosed as a related application.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 1, 3, 5, and 25** are rejected under 35 U.S.C. 102(b) as being anticipated by Hallon et al (US Pat No. 4751928).

7. In regards to **Claims 1**, Hallon et al discloses an electrode belt comprising:

a belt material being elastic in some sections, said belt fully surrounding a test subject over the circumference of the body, as best seen in Figure 3 and comprises “elastic holder” (6) (Col.2: 23-25) placed on a test subject’s chest along with “fastening belt” (8) (Col.56-64), best seen in Figure 2, placed on the back of patient, wherein when the two are connected by respective “straps” (11) (Col.3: 1-14) said belt material fully surrounds the test subject; 16 or more electrodes on said belt material as shown in Figure 3 (Col.2: 36-46); electrode feed lines, referred to as “conductors” (7), said electrode feed lines being integrated within said belt material, wherein said elastic holder (6) of said belt material is composed of two plates that sandwich said electrode feed lines and allow said electrode feed lines to pass through, and are thus considered integrated within said belt material (Col.2: 24-30);

a feed line, referred to as “multiple plug” (Col.3:15-16) connected to “socket” (16), said electrode feed line being connected to said feed line at one or more feed points along said belt material, as best seen in Figure 3 (Col.2: 49-52).

8. In regards to **Claim 3**, Hallon et al disclose the electrodes arranged at equally spaced locations from one another on the belt material, as seen in Figure 3.

9. In regards to **Claim 5**, Hallon et al disclose said belt material and said electrode feed lines form plural belt segments with one or more of said electrodes arranged on individual belt segments, wherein a belt comprising of numerous rows inherently forms plural belt segments, wherein a segment is defined as any of the parts into which something can be divided, wherein in the instant case, a segment is defined as one electrode row of the belt surrounding the patient. Thus, it is said that the belt material having electrode feed lines forms plural belt segments with one or more electrodes arranged on the individual belt segments.

10. In regards to **Claim 25**, Hallon et al disclose an electrode belt comprising:  
an electrode holder, referred to as "elastic holder" (6), said electrode holder being composed of a stretch material (Col.2: 23-25);  
16 or more electrodes (Col.2: 36), said 16 or more electrodes being located on said electrode holder, as best seen in Figure 3;  
electrode feed lines, referred to as "conductors" (7), extending within said stretch material, wherein said elastic holder is composed of two plates that sandwich said electrode feed lines and allow said electrode feed lines to pass through, and are thus said to extend within said stretch material (Col.2: 24-30);

an external feed line, referred to as "multiple plug" (Col.3:15-16) connected to "socket" (16), said external feed line being connected to said electrode feed lines at one or more connection sites on said electrode holder, as best seen in Figure 3 (Col.2: 49-52).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. **Claim 11** is rejected under 35 U.S.C. 103(a) as being unpatentable over Hallon et al in view of Kristbjarnarson et al (US Pat No. 6461307). Hallon et al disclose an electrode belt with feed points arranged symmetrically in relation to one another, wherein the presence of one feed point as recited in the limitations of Claim 1 automatically constitute symmetric arrangement, but do not disclose the belt material split into two sections of approximately equal size.

13. Kristbjarnarson et al disclose a belt sensor assembly comprising of at least two segments, referred to as "ribbon" (10), each segment having a belt closure or "latching mechanism" (332) (Col.6, line 49-50, 60-63) shown in Figure 1, to allow secure attachment of the ribbon to the body while allowing flexibility in sizing for different patients (Col.7, line 2-6). Therefore, it would have been obvious to one of ordinary skill in the art to modify the electrode belt of Hallon et al to split the belt material into two sections of approximately equal size, as taught by Kristbjarnarson et al, to promote ease of use and sizing for different patients.

*Allowable Subject Matter*

14. **Claims 16-18 and 20** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and to overcome the claim objection above.
15. **Claims 26-27, 29-37 and 39-47** are allowed over the prior art of record. The prior art does not disclose alone or in combination an electrode belt recited in independent Claim 26, specifically an electrode belt comprising one or more elastic tubes having electrode feed lines extending within the one or more hollow elastic tubes, wherein said electrode feed lines have a length between electrodes that is greater than a length of said elastic tubes in a non stretched state. **Claim 28 and 38** would be allowable if amended to overcome the above claim objection.

*Response to Arguments*

16. Applicant's arguments with respect to **Claims 1, 3, 5, and 11** have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Nguyen whose telephone number is 571-272-8340. The examiner can normally be reached on Monday - Friday, 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HQN  
12/01/2006

jen

*[Signature]*